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SUBJECT: SUPREME COURT DECISIONS REINFORCE CONSTITUTION,
STUDENTS RELEASED

REF: KATHMANDU 429

Classified By: Ambassador James F. Moriarty, reasons 1.4 (b/d)

SUMMARY

¶1. (C) The February 13 decision of the Supreme Court to dissolve the Royal Commission for Corruption Control (RCCC) (reftel) reinforced Nepal's constitution as a viable document and could limit the King's authority. Reactions from the Parties and the media were generally positive. The Court also continues to rule on separate habeas corpus petitions and issued an order on February 13 to release 15 student leaders. The government has continued to release detainees arrested immediately before the February 8 municipal polls. End Summary.

SUPREME COURT DECISION REINFORCES NEPAL'S CONSTITUTION

¶2. (C) The Supreme Court's decision to dissolve the RCCC reinforced Nepal's constitution as a viable document and proved there were limits to the King's authority. There had been significant international pressure for the Supreme Court to declare the RCCC (established by the King under State of Emergency powers, but continued after he had lifted the State of Emergency) unconstitutional. In the unanimous 5-judge decision, the Justices ruled that both the RCCC's formation order issued by the King and its continuation were unconstitutional; the Court also voided all RCCC actions. The Supreme Court's verdict reportedly addressed three other constitutional issues: it clarified that the source of state power is the Nepali people, not the King as per a 1962 constitution; the Court ruled that, if the King's actions raise serious constitutional questions, those actions can be challenged in court; and Article 127 of Nepal's constitution can be invoked by the King only if difficulties arise in implementing the Constitution, not under false pretenses, and "it cannot be invoked to curtail citizens rights guaranteed by the constitution." Newspapers touted the Supreme Court's ruling that Nepalese people were the source of power behind the constitution.

PARTY HAILS INDEPENDENT JUDICIARY

13. (SBU) Leaders of the seven-party alliance welcomed the Supreme Court's order, saying the verdict reinforced the judiciary's independence. Pradip Nepal, spokesperson for the Communist Party of Nepal-United Marxist-Leninist Party (CPN-UML), stated that the decision would help re-establish the rule of law in Nepal. Rastriya Prajatantra Party (RPP) Chairman Pashupati Shumsher Rana added that the ruling showed the court's independence and said the Parties would "respect and honor" the decision.

SEPARATE ORDER SECURES RELEASE OF STUDENT LEADERS, 115 OTHERS RELEASED

14. (SBU) Sher Bahadur Deuba, the former Prime Minister and President of the Nepali Congress - Democratic (NC-D), and Prakash Man Singh, President of the NC-D, were released from detention the evening of February 13. Acting on separate habeas corpus petitions, the Supreme Court also issued an order on February 13 to release 15 student leaders. The police followed the order and the student leaders were released on February 13. According to February 14 news reports, the government released 115 more detainees in Kathmandu and Lalitpur, including political party members, human rights activists and journalists. The human rights organization Informal Sector Service Center (INSEC) claims that approximately 200 detainees have been released nationwide since February 13, totaling approximately 500 released out of 800 arrested. Most of the released detainees had been arrested during protests leading up to the February 8 municipal elections.

COMMENT

15. (C) The Supreme Court's decision provides hope that Nepal's constitution remains a viable document and that people can contest the King's actions in court. The rulings could also bolster the King's position that a new constitution is unnecessary. The verdict could similarly be interpreted as a reply to those political activists who argued for the necessity of a constituent assembly because the existing constitution fails to ensure people's sovereignty.
MORIARTY